IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Bail Appl..No. 3942 of 2007()

LPC NO.9/07 , SC.830/2004 of ADDL.DISTRICT COURT (ADHOC), KASARAGOD
.....

: PETITIONER

MAMMUNHI @ MOHAMMED KUNHI,
S/O.ABBAS @ AMBACHU, CHOOR POST R.D. NAGAR,
KUDLU VILLAGE, KASARAGOD.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:

THE STATE OF KERALA,
REPRESENTED BY THE STATION HOUSE OFFICER,
KASARAGOD POLICE STATION,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR ADV.SRI.S.V.NAZEER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3942 of 2007

Dated this the 29th day of June, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegation of having committed offences punishable, inter alia, under Section 308 read with Sec.149 IPC. Co-accused have already faced trial. They were found not guilty and acquitted. The petitioner was not available for trial. The case against him has been split up. The same is pending before the Addl.Sessions Court (Ad-hoc-I), Kasargod. Consequent to non appearance of the petitioner, warrant of arrest has been issued against the petitioner and the case was transferred to the list of long pending cases. The petitioner now wants to surrender before the learned Addl.Sessions Judge. The petitioner, in these circumstances, has come before this Court for issue of appropriate directions under Section 438 and/-or 482 Cr.P.C in his favour.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary

equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed. But with the specific observation that, if the petitioner appears before the learned Sessions Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Sessions Judge must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner submits that the matter has been settled between the parties and the complainant is willing to appear before the learned Sessions Judge and report composition. Because of the allegation under Section 308 IPC, the

composition may not be accepted, it is apprehended.

6. Of course the petitioner can request the learned Sessions Judge for expeditious hearing of the question of charge and frame appropriate charges only. He can urge that at any rate, allegations under Sec.308 is not justified. He can simultaneously urge before the learned Sessions Judge that charge need to be raised only for compoundable offences and that such offence has already been compounded also. I expect the learned judge to consider that contention also, expeditiously.

With the above observation, this Crl.M.C. is dismissed.

(R.BASANT, JUDGE)

sj